

UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,
Plaintiff,
v.
SALVADORE RAMOS,
Defendant.

Case No. 6:21-po-0511-HBK
ORDER DNEYING MOTION TO DISMISS,
CONTINUING INITIAL APPEARANCE
AND APPOINTING COUNSEL
(Doc. No. 5)

Pending before the Court is defendant's *pro se* motion to quash warrants and/or fine; or in the alternative sentence in abstentia to concurrent term, incorporating a motion for appointment of counsel. (Doc. No. 5, "motion"). On or about July 17, 2021, defendant was charged with three Violation Notices: (1) engaging in an activity subject to a permit requirement without a permit in violation of 36 C.F.R. § 1.6(g)(1) (No. 09910695); (2) exceeding the posted speed limit (50 mph in 25 mph zone) in violation of 36 C.F.R. 4.21(c) (No. 09910694); and (3) driving without a license in violation of 36 C.F.R. § 4.2(b), incorporating California Vehicle Code 12500(a) (No. 09910696).

Defendant did not appear for his initial appearance which was scheduled before the undersigned for December 14, 2021 at 1:00 p.m. According to the motion, defendant is currently incarcerated in the Arizona State Prison Complex facility located at A.S.P.C. Kingman. (Doc. No. 5 at 1). Defendant requests the court to dismiss the current violation notices or seeks to be

1 sentenced “in absentia to a concurrent term now being served.” (*Id.*). Defendant further seeks
2 appointment of counsel. (*Id.* at 2).

3 The Court denies the motion to the extent it seeks pretrial dismissal of the violations. A
4 pretrial motion to dismiss seeks dismissal on a question of law. *See United States v. Schulman*,
5 817 F.2d 1355, 1358 (9th Cir. 1987). In ruling on such a motion, “the district court is bound by
6 the four corners of the indictment.” *United States v. Lyle*, 742 F.3d 434, 436 (9th Cir. 2014);
7 *United States v. Boren*, 278 F.3d 911, 914 (9th Cir. 2002) (“On a motion to dismiss an indictment
8 for failure to state an offense the court must accept the truth of the allegations in the indictment in
9 analyzing whether a cognizable offense has been charged.”). The court asks only whether a crime
10 has been alleged. *United States v. Milovanovic*, 678 F.3d 713, 717 (9th Cir. 2012). Rule 12
11 motions cannot be used to determine “general issues of guilt or innocence.” *Boren*, 278 F.3d at
12 914 (citation omitted). In other words, the question before the court is not one of plaintiff’s guilt
13 or innocence but instead a question of if the United States has alleged defendant has committed a
14 crime. Having reviewed each Statement of Probable Cause, the court concludes the Violation
15 Notices sufficiently allege defendant violated Title 36 C.F.R. § 1.6(g)(1) (No. 09910695); 36
16 C.F.R. 4.21(c) (No. 09910694); and (3) 36 C.F.R. § 4.2(b), incorporating California Vehicle Code
17 12500(a) (No. 09910696). (Doc. Nos. 1-2, 3-2, 4-2).

18 The Court in the interests of justice and pursuant to the U.S. CONST., amend VI and 18
19 U.S.C. § 3006A, appoints Griffin Estes from the Office of the Federal Defender as counsel for
20 defendant. The court will not sentence defendant in abstentia but instead will continue
21 defendant’s initial appearance to **Tuesday, April 19, 2022 at 1:00 p.m.**, absent appointed counsel
22 moving for an earlier hearing.

23 DONE AND ORDERED

24 Dated: December 16, 2021


HELENA M. BARCH-KUCHTA
UNITED STATES MAGISTRATE JUDGE

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